UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

COLLECTORS UNIVERSE, INC., **Plaintiff,** **v.** **DUANE C. BLAKE,** **Defendant,** _____ **DUANE C. BLAKE,** **Counterclaimant,** **v.** **COLLECTORS UNIVERSE, INC., PROFESSIONAL COIN GRADING SERVICE, EXPOS UNLIMITED LLC, and DHRCC LLC,** **Counterclaim Defendants.** _____	**CASE NO. SACV 14-00333 AG (DFMx)** **CLAIM CONSTRUCTION ORDER**

BACKGROUND

Defendant Duane C. Blake ("Blake") is the inventor and owner of United States Patent No. 8,661,889 (the "'889 Patent"), issued March 4, 2014. The '889 Patent claims methods of displaying uncirculated coins. The methods include the use of a label showing that the coins have been given an above-average "eye appeal" ranking within the coin's whole number grade on the conventional Sheldon coin grading scale.

On the same day the U.S. Patent and Trademark Office ("USPTO") issued the '889 Patent, Plaintiff Collectors Universe ("CU") filed this case, seeking a declaration that the '889 Patent is invalid and that CU does not infringe it. (Compl., Dkt. No. 1 at ¶¶ 31-42.) On July 3, 2014, Blake filed Counterclaims against CU, Professional Coin Grading Service ("PCGS"), DHRCC LLC ("DHRCC"), and Expos Unlimited LLC ("Expos Unlimited") (collectively, the "Counterclaim Defendants"). (Am. Answer, Dkt. No. 14.)

The parties now dispute the claim constructions for two terms in the '889 Patent, and have agreed to the constructions of eight terms. (Jt. Claim Constr. and Prehearing Statement, Dkt. No. 16. at 2-4.) In this Order, the Court determines the proper constructions of the disputed terms.

LEGAL STANDARD

Claim construction is an interpretive issue "exclusively within the province of the court." *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). It begins with an analysis of the claim language itself, *Interactive Gift Express, Inc. v. Compuserve, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001), since the claims define the scope of the claimed invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). In construing the claim language, the Court begins with the principle that "the words of a claim are generally given their ordinary and customary meaning." *Id.* (internal quotation marks omitted).

"The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1313.

"[T]he person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* Where the patent itself does not make clear the meaning of a claim term, courts may look to "those sources available to the public that show what a person of skill in the art would have understood the disputed claim language to mean," including the prosecution history and "extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id.* at 1314.

"In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* "In such circumstances general purpose dictionaries may be helpful." *Id.* In other cases, claim terms will not be given their ordinary meaning because the specification defines the term to mean something else. *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334 (Fed. Cir. 2004); *Kumar v. Ovonic Battery Co., Inc.*, 351 F.3d 1364, 1368 (Fed. Cir. 2003). For the specification to define a term to mean something other than its ordinary meaning, it must set out its definition in a manner sufficient to provide notice of that meaning to a person of ordinary skill in the art. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

ANALYSIS

1. AGREED TERMS

The parties agree that the Court does not need to construe the following eight claim terms: "providing," "having been," "color-coded label/label/labeling," "holder/appropriate holder," "fractional grade," "above average quality," "plus ('+') symbol," and "gold art symbol." (Jt. Claim Constr. and Prehearing Statement, Dkt. No. 16 at 2.) Therefore, the Court does not construe these terms.

2. DISPUTED TERMS

The parties dispute the constructions of "eye appeal" and "eye appeal-related information indicators." The disputed terms occur in asserted claims 1, 3, and 4, which are reproduced here for context, with the disputed terms in bold.

1. A coin value preservation and safeguard holder display method adapted to increase coin grading precision within the conventional Sheldon coin grading standard and further safeguard the condition of an uncirculated coin through the introduction and display of one or more **eye appeal-related information indicators**, comprising:

a) providing an uncirculated coin, said coin

i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale; and

ii) said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment with a second digital coin image file of said coin created at a later date;

b) including a standard clear plastic coin holder display device capable of displaying a coin label in proximity to said related uncirculated coin; and

c) introducing and displaying said coin label, said label being internally-affixed within said coin holder display device and further capable of displaying at least one **eye appeal-related information indicator** associated with said uncirculated coin, whereas said at least one **eye appeal-related information indicator** comprises a plus ("+") symbol printed on said label defined within said display device, said + symbol adjoining the coin's Sheldon whole number grade on said label, and further being

located on said label in proximity to said coin such that the indicator is openly displayed, said indicator further correlating to a precise above-average fractional grade condition of said coin.

('889 Patent 15:65-16:24 (emphasis added).)

3. A method of claim 1 for displaying at least one visual indicator associated with an uncirculated coin by using a coin label situated within an appropriate holder, comprising visually including therewith, and arranged in a manner such that an **eye appeal-related indicator** associated with said coin comprises a QUERTY plus (+) symbol such as to indicate that said uncirculated coin's **eye appeal** condition is predetermined to be of above average quality within its Sheldon scale whole number grade, and the preservation safeguard-related indicator associated with said coin comprises a colored label such as to indicate that the uncirculated coin was imaged beforehand using a conventional digital image recording device, and that the imaged coin's digital file is stored in a computer database for future comparative purposes.

('889 Patent 16:41-54 (emphasis added).)

4. A coin value preservation and safeguard holder display of claim 1, wherein said holder is capable of displaying one or more labeling indicators that are located in proximity to a graded coin contained within said holder, said holder comprising a graded coin and an internal grading label, said grading label including a first plus ("+") symbol grading indicator capable of displaying to the viewer that the graded coin has been graded using a fractional increment grading scale and found to have above-average **eye appeal** within the further displayed standard Sheldon scale whole number grade being displayed on the label, said above-average **eye appeal** condition being based on one or more characteristics of the graded coin, and said label further comprising a second colored symbol label indicator capable of displaying to

a viewer that at least one electronic image file of the graded coin displayed within the holder has been previously recorded and said file is as a first file maintained in a standard computer digital file database that allows for future comparative assessment of the first file to a second digital file.

('889 Patent 16:55-17:6 (emphasis added).)

2.1 "Eye Appeal"

Claim Term	Defendant's Proposed Construction	Plaintiff's Proposed Construction
eye appeal (claims 3, 4)	The overall appearance and/or aesthetic attractiveness/beauty of a coin with respect to toning, color, balance, freshness, marks/blemishes, strike, luster, planchet condition, and surface preservation on both the obverse, reverse, and sides of a coin, or any angle thereof.	Overall appearance/aesthetic attractiveness. The eye appeal of a coin is assessed by determining one or more axial ultimate refractory angles (AURAs) of a coin.

The parties dispute whether the term "eye appeal" should be defined to include (1) "AURA" analysis, and (2) Defendant's proposed list of eye appeal-related criteria. (Jt. Claim Constr. and Prehearing Statement, Dkt. No. 16 at 3.) Defendant argues that his construction is consistent with the entire patent, and that Plaintiff's proposed construction improperly ignores the specification's clear definition of "eye appeal." (Def.'s Opening Claim Constr. Br., Dkt. No. 21 at 6-8.) Plaintiff argues that "AURA" is a necessary part of the construction of "eye appeal" in view of the '889 Patent's prosecution history. (Pl.'s Opening Claim Constr. Br., Dkt. No. 17 at 12-14.)

"AURA," or "axial ultimate refractory angle," is somewhat elusively described in the '889 Patent. The specification states that AURA "is intended to include systems, methods, experienced reviewers, tools and other items that allow a qualitative visualizing, assessing, reviewing, recording of the eye appeal of a coin." ('889 Patent 6:5-9.) The patent further specifies that "an 'overall axial

ultimate refractory angle rating' refers to the overall AURA rating given to a coin based on the individual AURA determined for the obverse side and the reverse side of a coin." (*Id.* at 6:28-31.) "An 'ultimate' angle(s) is intended to include the best angles(s) or 'sweet spot(s)' at which to view a particular coin. That is, when a coin is rotated or tilted to an ultimate angle, it displays its greatest eye appeal based on characteristics of eye appeal specific to the type of coin." (*Id.* at 6:39-43.)

"There can be one AURA or several AURAs for a particular coin and its AURA can be assessed on both the obverse and reverse sides of the coin." (*Id.* at 11:38-41.) The specification further states that "the AURA of a coin can be described by different qualitative designations like, for instance, below average, average or above average." (*Id.* at 12:3-5.) The patent does not disclose which, if any, ultimate angles are more desirable than others, or how one or more calculated angles or "sweet spots" can be converted to a qualitative rating, such as below average, average, or above average. Instead, the patent states that "the skilled artisan [is] well able to identify coins that, based on their AURA(s), fall into those categories." (*Id.* at 12:7-9.)

To construe "eye appeal," the Court first examines the language of the claims.

2.1.1 The Claims

Often "the claims themselves provide substantial guidance as to the meaning of particular claim terms." *Phillips*, 415 F.3d at 1314 (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). But here, the surrounding words of the claims are not particularly informative. The only phrases in asserted Claims 1, 3, and 4 that provide any context for "eye appeal" are "at least one eye appeal-related information indicator," "eye appeal condition is predetermined to be of above average quality within its Sheldon scale whole number grade," "above-average eye appeal within the further displayed standard Sheldon scale whole number grade," and "said above-average eye appeal condition being based on one or more characteristics of the graded coin." ('889 Patent 16:15-18, 16:47-49, 16:63-67.)

This context shows only that eye appeal is a quality of a coin somehow compatible with the Sheldon whole number scale that can be determined from certain unnamed characteristics of the

coin, and that above-average eye appeal seems to be a desired quality. This does not resolve whether eye appeal must be evaluated by assessing one or more AURAs, or which observable qualities of the coin determine its eye appeal rating. Unasserted Claims 2 and 5 likewise fail to clarify the meaning of "eye appeal" or help resolve whether or not it involves determining an AURA. (*Id.* at 16:30-31, 17:13.)

The Court turns next to the specification.

2.1.2 The Specification

"The specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs." *Phillips*, 415 F.3d at 1316 (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). The '889 Patent specification has a subsection entitled "Definitions," which contains a paragraph defining "eye appeal:"

> As used herein, "eye appeal" refers to the overall appearance and/or aesthetic attractiveness/beauty of a coin with respect to toning, color, balance, freshness, marks/blemishes, strike, luster, planchet condition and surface preservation on both the obverse, reverse and sides of a coin, or any angle thereof. For instance, a coin having high eye appeal generally has vibrant/intense color, excellent toning and/or superior luster. Eye appeal may also refer to a level of device/field cameo contrast or proof-like mirror finishes relating to certain coins, or a combination of any of the above (e.g. color and contrast).

('889 Patent 5:54-64.)

Importantly, the definition does not contain any reference to AURAs. There is a separate definition of "Axial Ultimate Refractory Angle (AURA)" in the same subsection: ". . . to include systems, methods, experienced reviewers, tools and other items that allow a qualitative visualizing, assessing, reviewing, recording of the eye appeal of a coin." (*Id.* at 6:5-9.) Thus, while AURA is

defined as a method for evaluating eye appeal, taking the definitions together shows that AURA is not a necessary part of every eye appeal evaluation.

The Court turns next to the prosecution history.

2.1.3 The Prosecution History

Plaintiff argues that despite the specification's express definition of "eye appeal," Defendant's remarks in an office action response during the prosecution of the '889 Patent require AURA to be included. (Pl.'s Opening Claim Constr. Br., Dkt. No. 17 at 12-14; Pl.'s Responsive Claim Constr. Br., Dkt. No. 27 at 2-5.) On February 7, 2013, the USPTO issued a non-final rejection of then-pending independent Claim 8 (Claim 1 in the issued '889 Patent). (Office Action, Dkt. No. 28-3 at 148.) The claim originally contained a reference to the "AURA rating of a coin." (Prelim. Amendment, Dkt. No. 28-4 at 57.) In the office action, the examiner stated that a prior art reference disclosed all elements of the claim except "displaying the AURA rating of the coins," but it would have been obvious to a person having ordinary skill in the art "to include and/or substitute whatever grading system [was] readily available to the user." (Office Action, Dkt. No. 28-3 at 148.)

On September 10, 2013, Defendant amended independent Claim 8 to remove all references to the AURA rating and rewrote the claim with greater specificity, including the new language "providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." (Correction to Non-Compliant Amendment, Dkt. No. 28-3 at 93.) In the accompanying remarks, the Defendant stated that "the Applicant has merely clarified the meaning of AURA within the scope of Amended Claim 8." (*Id.* at 97.)

On November 5, 2013, the USPTO issued a notice of allowance. (Notice of Allowance, Dkt. No. 28-3 at 74-83.) In the notice of allowance, the examiner stated that the reason for allowance was that "the cited prior art does not anticipate nor render obvious providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." (*Id.* at 81.)

Although Defendant's remark suggests that he may have intended the somewhat unclear AURA concept to remain a part of Claim 8, he removed all instances of "AURA" from the language of the claim and replaced it with another term that was explicitly defined in the specification. Plaintiff contends in its Responsive Brief that Defendant "used AURA, and *needed* AURA, to get his patent." (Dkt. No. 27 at 4 (emphasis in original).) If so, it is unlikely that he would have removed all mention of AURA from that claim. And although Defendant stated in his office action response that he "merely clarified the meaning of AURA," he could have meant that, whatever he was trying to convey with "AURA," "eye appeal" is the term that captures that meaning.

Further, the claim was allowed because the prior art did not teach providing a coin "having been fractionally graded within one whole number in the 60-70 range" of the Sheldon scale. (Notice of Allowance, Dkt. No. 28-3 at 81.) The fractional grade feature is not described anywhere in the specification as a feature of AURA or an AURA rating, and the only mention of a fractional grade is a brief one, in the final paragraph of the specification as a possible "alternative embodiment." ('889 Patent 15:53-57.) Thus, the examiner did not state that any particular type of grading was necessary to differentiate the claims from the prior art.

While the definition of AURA provided in the specification explicitly references eye appeal, the definition of eye appeal does not reference AURA. ('889 Patent 5:54-6:9.) Defendant's amendment and remarks were ambiguous, which is why the Federal Circuit has noted the limited comparative utility of the prosecution history for claim construction. *See Phillips*, 415 F.3d at 1317 ("because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes"). What is clear in the prosecution history is that the claims were amended to replace the AURA limitation with the "eye appeal" limitation.

2.1.4 Conclusion

The term "eye appeal" as used in Claims 1, 3, and 4 of the '889 Patent does not require "determining one or more axial ultimate refractory angles (AURAs) of a coin." The '889 Patent specification provides a clear definition of eye appeal, and that definition was not disclaimed or disavowed during prosecution.

The Court therefore construes "eye appeal" as it is expressly defined in the specification: "the overall appearance and/or aesthetic attractiveness/beauty of a coin with respect to toning, color, balance, freshness, marks/blemishes, strike, luster, planchet condition and surface preservation on both the obverse, reverse and sides of a coin, or any angle thereof."

2.2 "Eye Appeal-Related Information Indicators"

Claim Term	Defendant's Proposed Construction	Plaintiff's Proposed Construction
eye appeal-related information indicators (claims 1, 3)	Plain and ordinary meaning and self-enabling of words "information" and "indicator;" or if a specific claim construction is required in this context, an "information indicator" is defined: Any color, hue, or shade on the section or material or other written, visual or other sensory information that indicates/ conveys information about the coin.	Symbol conveying a standardized measurement of the overall attractiveness/aesthetic attractiveness. The eye appeal of a coin is assessed by determining one or more axial ultimate refractory angles (AURAs) of a coin.

Within the term "eye appeal-related information indicators," the parties primarily dispute the definition of "eye appeal." And each party's proposed construction of "eye appeal" within this term is the same as its proposed construction for "eye appeal" alone. (Jt. Claim Constr. and Prehearing Statement, Dkt. No. 16 at 3.) Because each party advances no additional arguments in favor of its

preferred construction, the Court construes "eye appeal" within the term "eye appeal-related information indicators" the same way it construes "eye appeal" alone.

Plaintiff argues that "the term 'eye appeal-related information indicator' must be construed to mean an indicator that *only* reflects the eye appeal grade." (Pl.'s Opening Claim Constr. Br., Dkt. No. 17 at 16-17.) It is hard to locate that requirement in the words of Plaintiff's proposed construction. That aside, Plaintiff argues that the indicator must only reflect the eye appeal grade based on the doctrine of claim differentiation. (*Id.*) Plaintiff argues that because unasserted Claims 2 and 5 "refer to indicators that 'partially' reflect information about a coin's eye appeal," the "eye appeal-related information indicators" referenced in Claims 1, 3, and 4 must have a different meaning. (*Id.*)

First, claim differentiation "is a guide, not a rigid rule." *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533, 1538 (Fed. Cir. 1991). Second, here it actually points away from Plaintiff's position. That is because Plaintiff's claim differentiation argument is backwards. A typical form of independent-dependent claim differentiation argument is that if the independent claim recites "a color" and the dependent claim says "wherein the color is green," then it is presumed that the color in the independent claim is not limited to green. *See, e.g.*, *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004) (holding that independent claims did not contain a pressure jacket requirement where claims that explicitly recited the requirement of a pressure jacket depended from asserted independent claims that did not).

Here, Plaintiff argues the converse: that because the dependent claims recite partial indicators, the independent claims must have not-partial indicators. But "[i]t is axiomatic that dependent claims cannot be found infringed unless the claims from which they depend have been found to have been infringed." *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1553 (Fed. Cir. 1989). Thus, claims 1 and 3 cannot exclude the "partial" indicators of claims 2 and 5. Even if claim 1 only requires that the indicator reflect information about eye appeal, it does not preclude the indicator from also reflecting other information.

Defendant proposes that the words "information" and "indicators" should have their "plain and ordinary meaning," and provides an alternative construction for "information indicators" to be

used only "if a specific claim construction is required in this context." (Jt. Claim Constr. and Prehearing Statement, Dkt. No. 16 at 3.) Plaintiff contends that it "does not contest the scope of what may be utilized as an indicator." (Pl.'s Resp. Claim Constr. Br., Dkt. No. 27 at 5.)

Because Plaintiff does not propose a construction of "information indicator," the Court adopts Defendant's proposal that "information indicator" not be further construed. "[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy." *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (citing *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554 (Fed. Cir. 1997)).

The Court therefore does not construe "eye appeal-related information indicators" beyond its construction of "eye appeal" adopted in Section 1, noting that "eye appeal-related information indicators" can reflect information beyond eye appeal.

DISPOSITION

These claim constructions shall govern this case.

IT IS SO ORDERED.

DATED: December 1, 2014

Andrew J. Guilford
United States District Judge